

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-3853
OCTOBER 16, 2003**

R E S O L U T I O N

Resolution E-3853. Pacific Gas and Electric Company requests approval of renewable resource procurement contracts.

By Advice Letter 2423-E filed on September 18, 2003.

SUMMARY

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 2423-E on September 18, 2003, requesting Commission review and approval of several renewable energy contracts. AL 2423-E was submitted in compliance with the "Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations" (ACR) dated August 13, 2003. The ACR authorized any of the investor-owned utilities (IOU) to enter into renewable energy contracts in the interim period prior to the first solicitation pursuant to the fully developed Renewables Portfolio Standard (RPS) adopted in D.03-06-071. The ACR authorized both competitive solicitations and bilateral agreements for renewable energy products. The contracts, for which PG&E is seeking approval, are bilateral agreements between PG&E and the selling parties.

PG&E demonstrated in its filing that the contracts were mutually agreeable to the countersigning parties and that the evaluation methodology used to select the power procurement contracts was reasonable. PG&E also made a sufficient showing that these contracts are in the ratepayers' interest because they meet PG&E's obligation to procure renewable resources at reasonable prices and contain features that protect ratepayers against undue future costs. The members of PG&E's Procurement Review Group (PRG) either supported or did not oppose the approval of these contracts.

We have considered whether, and to what degree, to disclose information submitted to us under seal. It is incumbent upon this Commission to keep sensitive information confidential while still making plain to the public at large the bases for Commission decisions. In the final analysis, it is the Commission's

responsibility to make decisions in the light of day, and we give that obligation great weight in determining whether commercial information is of such critical sensitivity as to override broader public concerns. A similar issue was addressed in Commission Resolution E-3816, and we draw on the treatment of confidential information in that resolution in making our decision regarding the contracts before us.

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be disclosed for the reasons discussed in the body of this resolution. Accordingly, text in this resolution which is marked "[REDACTED]" in the redacted copy, which contains the redacted information to be disclosed inside the brackets in the unredacted version, should be made public upon Commission approval of this resolution. Specific pricing information which appears **[[[underlined in triple brackets]]]**, which appears in this **light blue highlight** in the unredacted electronic copy, which appears in **gray highlight** in the unredacted hardcopy, should *not* be made public under any circumstances. Additionally, any terms of the Power Purchase Agreements (PPAs) and some confidential information not submitted under Section 583 (i.e. TURN protest and replies of the Facilities) should not be revealed. Such information is also **highlighted in blue** or **gray** to denote its redacted nature. We wish to make clear that the decision we make here is based on the unique facts before us today, and we will adopt broadly applicable standards governing confidentiality elsewhere. We find that the public interest in non-price disclosure is not outweighed by the public interest in confidentiality.

In its filing, PG&E requests that AL 2423-E be effective no later than October 28, 2003, should its September 18 Motion be rejected¹.

AL 2423-E was protested by TURN. This resolution approves AL 2423-E effective today.

¹ "Motion for Adoption of Expedited Review Process for Advice Letter 2423-E," discussed in section titled "Protests"

BACKGROUND

SB 1078, chaptered on September 12, 2002², establishes the California Renewables Portfolio Standard Program, which requires an electrical corporation to increase its use of eligible renewable energy resources³ to 20 percent of total retail sales no later than December 31, 2017⁴. The Energy Action Plan, a joint agency document approved in May 2003, states a policy preference for accelerating this goal to 2010.

In D. 03-06-071, issued on June 19, 2003, the Commission implemented four key aspects of the statute, establishing:

1. a market price referent for renewables contracts;
2. a process for ranking renewables contracts according to the “least cost” and “best fit”;
3. rules for flexible compliance;
4. standard contract terms and conditions.

That decision also established the review and approval process to be used by the utility, including use of Advice Letter filings.

The statute requires the Commission to direct each electrical corporation to file renewable energy procurement plans to satisfy its obligations under the RPS. The filing of these plans will trigger a competitive renewables solicitation to implement the procurement plan.

The August 13 ACR authorized any of the investor-owned utilities to enter into renewable energy contracts in the interim period prior to the first solicitation pursuant to the fully developed RPS. The ACR authorized both competitive solicitations and bilateral agreements for renewable energy products.

The ACR establishes requirements for any interim procurement activity:

² Statutes of 2002, Chapter 516

³ Defined in Public Utilities Code Section 399.12(a)

⁴ Pub. Util. Code Sec. 399.15(b)(1)

1. Contracts must not anticipate the use of any Supplement Energy Payments to be awarded by the CEC pursuant to Public Utilities Code Sec. 383.5(d).
2. Solicitations must not anticipate creation of a Market Price Referent. Any internal benchmarks developed by the utility must be provided to its PRG during Preliminary Evaluation.
3. An RFO must clearly stipulate up-front how the utility will calculate adders for transmission upgrades and integration costs, and how the utility will assign capacity values and payments to as-available resources.
4. Sellers who anticipate use of the federal Production Tax Credit (PTC), must provide two contract prices, whether the contract is selected under a competitive solicitation or bilateral agreement. One price will assume the PTC is extended in 2004, the other will assume PTC is not extended.

The ACR directs a utility utilizing this interim process to provide its preferred contracts to its PRG and the Commission for review, and provides ten working days each for the PRG to evaluate the Preliminary Evaluation and the Short List of proposed contracts. D.03-06-071 states that “PRG members will have an opportunity to make recommendations on the Advice Letter for Commission consideration.” (Decision at p. 38) Following PRG review, the utility must file by advice letter its proposed contract(s), documentation supporting procurement process steps and evaluation methodology.

In D.02-08-071, the Commission required each utility to establish a PRG whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of each utility’s:

1. Overall transitional procurement needs and strategy;
2. Proposed procurement processes including, but not limited to, the requests for offers (RFOs); and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review and approval.

The PRG remains active in reviewing and commenting on IOU solicitations for power products, including renewable energy. PG&E’s PRG participated in discussions of the contracts proposed in AL 2423-E. The PRG for PG&E is comprised of Aglet Consumer Alliance, California Energy Commission (CEC), California Utility Employees (CUE), Consumers Union (CU), Department of Water Resources (DWR), Energy Division, Office of Ratepayer Advocates (ORA),

Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN).

In July 2003, PG&E began negotiations with three biomass power plants. PG&E kept its PRG apprised of the negotiations. On September 18, 2003, PG&E filed Advice Letter 2423-E, requesting Commission approval of the renewable energy contracts. The confirmation of these contracts is subject to Commission approval.

NOTICE

Notice of Advice Letter 2423-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter excluding the confidential appendices was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

An ALJ Ruling dated September 26, 2003, addressing "Motion of PG&E for Order Shortening Time for Comment on PG&E's Motion for Adoption of Expedited Review Process," adopted an expedited schedule that requires a significantly reduced comment period on PG&E's "Motion for Adoption of Expedited Review Process for Advice Letter 2423-E." Comments on the first Motion were due September 29, with PG&E filing replies on September 30. No comments on the first Motion were filed.

On October 1, 2003, PG&E distributed to the service list in R.01-10-024 a letter from Commission's Executive Director William Ahern granting PG&E a shortened protest and reply period on AL 2423-E. Protests were due on October 6, with replies to protests due October 7.

Confidential comments were filed on October 1 by TURN. TURN requests one substantial modification to the AL filing, but generally supports the approval of these contracts. Due to the nature of TURN's request, we treat the filing as a protest.

Counsel representing the facilities (herein referred to as "Facilities") filed a confidential reply to TURN's protest on October 7. PG&E filed a confidential reply to TURN's protest on October 7. The substance of the protest and replies is discussed herein.

DISCUSSION

Energy Division examines PG&E's request on multiple grounds: evaluation of the contracts, contract selection and terms of the contracts, applicability of the contracts to PG&E's RPS targets, and PRG involvement. We also consider other relevant issues such as confidentiality, schedule for review and approval, and contract reasonableness.

PG&E adheres to the requirements of the August 13 ACR. PG&E states in its filing that the contracts do not anticipate use of Supplemental Energy Payments by the CEC. PG&E also does not "seek, or need, the creation of a Market Price Referent." Since this was not a competitive solicitation, the ACR requirements on application of transmission adders and integration costs do not apply here. PG&E states that the proposed counterparties do not receive the federal Production Tax Credit (PTC). PG&E also involves its PRG in the evaluation process, as required by the ACR.

Absent established market price referents cogent to a full RPS solicitation, we find that PG&E performed due diligence in its contract evaluation and applied reasonable internal benchmarks. As stated in the filing, PG&E provided the internal benchmarks to its PRG during preliminary evaluation.

PG&E demonstrated that the recommended offers meet PG&E commercial and non-commercial provisions, and contribute toward PG&E's renewables procurement target. PG&E obtains the attributes necessary to qualify the output of the units toward its RPS targets.

Evaluation Methodology

PG&E established an evaluation method to guide the selection of procurement contracts, details of which are classified as Confidential Protected Material in accordance with the May 1, 2002, Protective Order issued in Rulemaking (R.) 01-10-024, and pursuant to Pub. Util. Code Section 583. Energy Division staff and members of the PRG who have signed the non-disclosure agreement are in possession of the confidential data supporting PG&E's request.

The Market Price Referent (MPR) required by the statute and addressed in D.03-06-071 is still under development and was not available for the interim solicitations or bilateral agreements envisioned by the ACR. The ACR allows the

utility to develop its own internal benchmarks for preliminary evaluation, provided those benchmarks and details of their development are provided to the PRG. For the purpose of review and approval of PG&E's proposed contracts, Energy Division finds the benchmark(s) used were reasonable. **[[[Pricing information redacted]]]** The benchmark(s) are independent of the MPR under development for full RPS solicitations.

Contracts selected

Based on the criteria explained above, PG&E selected several biomass renewable energy contracts. The contracts are attached as confidential Appendix A to AL 2423-E. The contracts were signed with the following third parties for specified unit sizes:

Seller	Facility Location	Capacity in MW
Madera Power, LLC	Firebaugh	25.0
Community Renewable Energy Services, Inc.	Reedley (Dinuba)	12.0
Sierra Power Corporation	Terra Bella	7.0

[[[Specific PPA and price information – not for disclosure]]]

Selection Process

On September 26, Energy Division issued a confidential data request to PG&E requesting additional information. Based on information in PG&E's reply, dated September 30, the following history of the facilities is provided to demonstrate the urgency nature of AL 2423-E.

The contracts that PG&E is proposing were not previously under contract to PG&E. The QF contracts for each of the three plants were "bought out" by the IOUs with whom they held those contracts in 1995. They either shut down or sold to various buyers until December 2001 and January 2002, when the plants sold power under contract to Department of Water Resources. Those contracts expired June 2003. One plant has been out of operation since that time, and two have other buyers. PG&E has stated to Energy Division informally that the Madera plant has shut down, faces layoffs, and likely permanent closure. Plant closure would mean this plant would no longer be available to any RPS-obligated entities in California. For this reason, and PG&E's demonstration of reasonable contract terms and price, Energy Division believes the contracts should be

approved. However, PG&E did not sufficiently demonstrate that the Sierra and Dinuba contracts required expedited approval, as those plants have short-term contracts with other buyers. Neither the termination dates nor other terms of those contracts were disclosed to the Commission in the Advice Letter filing.

Because of the nature of these plants' operating and contract history, and the imminent closure of at least one plant, PG&E found it prudent to execute timely bilateral agreements with the facilities rather than hold a competitive solicitation to attract other renewable bids. TURN states in its confidential comments that it urged PG&E to solicit other cost-effective bilateral contract opportunities during this interim period. PG&E did not express interest in soliciting any other renewables bids at this time, and emphasizes in its current filing and in other procurement filings that it is not yet obligated under the RPS because it is not creditworthy. PG&E states in its reply comments that, while a competitive auction is the "best mechanism" to increase renewables procurement at a cost favorable to ratepayers, it believes the proposed contracts "demonstrate a clear ratepayer benefit" without "compromising its return to investment-grade status." Indeed, the ACR does allow for bilateral agreements subject to specific conditions, and PG&E has exercised that authority. While Energy Division is disappointed in the lack of diversity in PG&E's proposed contracts, they do not violate the terms of the ACR. Since this was a voluntary effort by PG&E, we have no basis for ordering PG&E to solicit additional or different products at this time, and deny TURN's request.

Application of proposed contracts toward PG&E's RPS targets

PG&E requests that the Commission find that the contracts meet PG&E's RPS obligations, specifically that the contracts count toward PG&E's baseline quantity of eligible renewable resources pursuant to Section 399.15 of Public Utilities Code. PG&E also requests a finding that the energy count toward its Annual Procurement Target (APT).

The energy from these contracts cannot count toward both measures. At the start of the RPS program, the Commission will establish the baseline quantities of renewables for each IOU. The APT consists of the mandated one percent requirement, plus any shortfalls in baseline (such as expiry of contracts that were in the previous year's baseline). Thus, the energy can only count toward *either* the baseline quantity *or* the APT. TURN explains in its protest how the baseline quantities and APT change each year. At the end of each annual period, the baseline is adjusted to reflect the percent of total retail sales provided by eligible

renewable resources, and a new APT is established that applies to the coming year. TURN is conceptually correct. However, it may not be appropriate to use the term “baseline” to refer to year-end adjustments of the quantity of renewables in a utility’s portfolio. As PG&E states in its reply comments, the term “baseline” has a specific meaning given in Pub. Util. Code Section 399.15(a)(3). We agree that a consistent definition of “baseline” is needed, and will address this matter within the broader Rulemaking.

PG&E agrees with TURN in its reply comments that the output should count toward its APT, and clarifies its request as such. Although the comments of TURN and reply of PG&E on this issue were filed under seal, the issue was raised in the publicly available Advice Letter itself. Accordingly, those comments on this issue should also be made available publicly for this discussion.

These contracts will count toward PG&E’s RPS target, either by making up for declines in baseline amounts (in the event the baseline-counted contracts have expired) or providing incremental generation toward the APT. The Commission has not yet completed its determination of baseline quantities for each IOU. However, Energy Division’s investigation finds the facilities are providing “incremental,” and not “baseline,” generation. Therefore, we find that the contracts will count toward PG&E’s APT.

Use of flexible compliance rules

PG&E states that its execution of these contracts and filing of the Advice Letter should not be interpreted as a waiver of the “grace period” for compliance with the APT. PG&E correctly cites D.03-06-071, Ordering Paragraph 2, which states:

“Compliance with the annual procurement target is not required until a utility is creditworthy, or a creditworthiness alternative is defined in statute.”

Thus, PG&E is not required to fulfill its RPS obligations until it becomes creditworthy. However, the Commission determined in D.03-06-071 that this condition does not exempt PG&E from ultimately meeting its RPS targets. PG&E has the option to exercise the mechanisms for flexible compliance, as discussed. We also note that D.03-06-071 allows the utilities to carry over 100 percent of their APT from the first year of the program without penalty (Decision at p. 49)

Price refresher

PG&E has not paid any premiums or fees to keep the selected contracts open during contract negotiation and Commission approval processes. None of the proposed contracts have “refresh” provisions that would modify the final price of the contract.

PRG participation

PG&E hosted two PRG meetings on July 2 and August 14, 2003, and provided additional information about the evaluation process on September 12. PG&E also convened PRG conference calls as needed to discuss the evaluation process. The PRG had the opportunity to discuss types of products sought, evaluation method, and PG&E’s recommendations. These meetings provided the appropriate platform to keep PRG members informed on procurement developments, and to exchange concerns and ideas. It also provided means to check on the utility’s procurement planning process.

TURN, a member of the PRG, filed a protest on AL 2423-E on October 1.

Data filed in confidential appendices

PG&E attached to AL 2423-E the renewable procurement contracts for which it seeks Commission approval: a briefing package provided to the ultimate decision maker(s), quantitative process used to rank offers, PRG meeting minutes and presentation handouts, and other analyses prepared for the PRG. Inclusion of these attachments is consistent with guidance given in D. 02-08-071. Other requested documentation required by D. 02-08-071 were not relevant to this filing, such as forecast used by the utility to analyze contracts and authorized low case residual net short and amounts/percentages met with contracts. All the attachments are classified as Confidential Protected Material in accordance with the May 1, 2002, Protective Order issued in R. 01-10-024, and pursuant to Pub. Util. Code Section 583.

Schedule for Advice Letter review

PG&E states in its Advice Letter filing that it is submitting contracts under the advice letter timeline specified in the August 13 ACR. PG&E is requesting an aggressively expedited schedule for review and approval of the contracts, departing significantly from the ACR provision that

“any Advice Letter submitted should follow general Commission process for Advice Letter review and should not use the expedited procedures and schedules adopted in D.02-08-071.”

While we understand the urgent nature of the filing, as described in its Confidential appendices, we strongly discourage any of the utilities from applying this kind of pressure not only to the Commission but also to parties who may wish to respond to the substantive issues. PG&E also significantly departed from the standard practice of requesting expedited review and approval of the Advice Letter within the Advice Letter itself by filing two concurrent motions in R.01-10-024 seeking the relief. Future renewables solicitations and bilateral negotiations under the RPS will follow the process outlined in D.03-06-071, which includes Commission approval of contracts by Advice Letter filing, following the normally established schedule for those filings.

Determination of reasonableness for purpose of rate recovery

Appendix B of D.02-08-071 states that approval of an advice letter submitted under the transitional procurement process would constitute a determination by the Commission that costs incurred by the utility under the contract itself and/or under contracts conforming to the procurement process are “reasonable” and “prudent” for purposes of recovery in retail rates under the Pub. Util. Code for the full term of the contract(s). Energy Division believes the same finding should be made for the contracts proposed in AL 2423-E.

TURN Confidential Comments and Reply Comments of PG&E and the Facilities

In its protest filed October 1, TURN states that the contracts are structured in such a way that PGC funds through the CEC’s existing resources account are maximized, and urges the Commission to consider the drain posed on those funds by the contracts. Yet, TURN also states that it does not believe “these contracts create an incremental drain on the Renewable Resource Trust Fund.” The Facilities replied to TURN’s concern, stating that the facilities do not receive Supplemental Energy Payments, but are eligible for payments from the CEC as Tier I Existing Facilities. The Facilities also state that they may only receive CEC payments through 2011, as authorized by the Legislature, and that those

payments are authorized only until 2006⁵. TURN and PG&E state the maximum award these facilities would receive from the CEC Tier I subsidy is 1.0 cent per kWh.

The funds for any awards to these facilities would be made in accordance with guidelines already established by the CEC. While there may be no *incremental* “drain” on CEC funds, Energy Division does not find it appropriate to change the energy and capacity payment structure of the contracts in order to reduce CEC award amounts. The payment structure of PGC awards is clearly the responsibility of the Energy Commission.

TURN also discusses the application of production incentives for “qualified agricultural biomass”⁶ to these contracts, stating that these subsidies were approved by the Legislature after the contracts were signed and would constitute a windfall for the developers if awarded. TURN requests that the Commission condition its approval on a contract requirement that subsidies received from the CEC pursuant to SB 704 be passed through in their entirety to PG&E ratepayers.

In examining the history of passage of SB 704, we find that the bill had passed both the Senate and Assembly as of September 11, and was enrolled on September 16, prior to the signing of the contracts on September 18. While the subsidies were not guaranteed until the legislation was signed by the Governor on September 22, we must assume that the facilities took the subsidy into account when preparing their bids. In fact, the Facilities state in their reply comments that they were “aware of and anticipated the passage of SB 704, given that its passage was proceeding at the same time the contract was being negotiated.” PG&E states in its reply comments that it did not consider the additional subsidy in its analysis of total ratepayer costs. PG&E also estimates the amount of this subsidy to the facilities, if all fuel used is “qualified agricultural biomass,” at 1.0 cent per kWh.

⁵ At that time, the CEC must file an “Investment Plan” with the Legislature and obtain approval to continue payments from PGC funds beyond 2006.

⁶ Created by SB 704 (Florez), signed September 22, 2003, Chapter 480 of the Statutes of 2003

TURN also notes that the subsidies created by SB 704 will come from the CEC's Renewable Resource Trust Fund, which is also the source of future Supplemental Energy Payments (SEPs) for the RPS. TURN is concerned that a "double dipping" problem may be created between application of the renewable energy and agricultural subsidies. Although these facilities may receive awards from the Existing Resources Account, which is also funded from the Renewable Resource Trust Fund, they will not be receiving Supplemental Energy Payments from the New Renewable Resources Account.

The Legislature has created two separate subsidies for which these plants may be eligible, one related to supporting various forms of renewable energy, and the other supporting the conversion of agricultural waste into biomass energy production. The Facilities state the intent of the SB 704 subsidy as paying for the "higher marginal fuel cost associated with agricultural fuel," and providing for "better air quality in the San Joaquin and Sacramento valleys." Thus, it does not appear that the facilities will be "double dipping" from CEC funds. We encourage the CEC to carefully track the application of subsidies to these contracts to prevent this possibility in the future.

TURN states that it will "work with the CEC to reduce the subsidies over time" to a minimum level that allows the plants to continue operation. We wish to be apprised of any efforts in this direction by TURN and the CEC through their participation in the PRG.

Based on the above, Energy Division does not believe that the contracts should be amended to require pass-through to ratepayers of any subsidy authorized by SB 704 via reduction in contract price. The request of TURN should be denied.

Confidentiality of contract data

TURN urges the Commission to disclose in this resolution all information related to these contracts with the exception of pricing terms. While we respect the nature of TURN's confidential protest filing, and the confidential nature of the replies of PG&E and the Facilities, the fact that a discussion of confidentiality takes place under confidential seal is troubling. Energy Division recommends that this section remain redacted during draft circulation due to the confidential nature of the filings, and be revealed upon passage of the resolution.

TURN claims there is "strong public interest" in requiring disclosure. TURN refers to PG&E's reply brief in the RPS evidentiary hearings in R.01-10-024, in

which PG&E agrees with the TURN/SDG&E Joint Principles with respect to public disclosure, and makes conditions for a six month delay in the release of such information. TURN states that these contracts do not meet those conditions, and thus it is not prudent to delay disclosure on these contracts for six months. TURN also requests that the Commission replicate findings made in Resolution E-3816 related to disclosure of certain contract information.

The Facilities replied to TURN's disclosure request, stating that the facilities need to be treated the same as other parties and counterparties for competitive purposes. The Facilities request deferral of the disclosure issue until it can be "debated and decided in the RPS proceeding." PG&E does not believe the Commission should compel disclosure at this time. PG&E does state, however, that it is willing to release more details of these contracts, provided the counterparties agree. PG&E further states in its reply comments:

"Absent such agreement, however, all terms and conditions of the contract should remain confidential."

We agree with TURN in principle on disclosure of information for the current contracts. We do not reveal, however, all non-price and non-PPA information. PG&E requests in its reply comments that the Commission "consider disclosure of any contractual terms only after the adoption of standard terms and conditions for the procurement of renewable resources." The only contract term we have chosen to disclose today is plant capacity. That decision does not prejudice or alter the development of standard terms and conditions.

It is in the public interest to disclose some aspects of the contracts, with the exception of pricing terms, and have addressed that need herein. We also draw on our rationale for disclosure in Resolution E-3816. We will disclose the number of contracts and fuel type, facility name and location, and plant size for each contract. On an ongoing basis, as we enter full implementation of the RPS, we will continue to address confidentiality issues in the RPS docket.

We find that it is in the public interest to make public certain material filed under seal pursuant to Pub. Util. Code Section 583 and General Order (G.O.) 66-C. Accordingly, text in this resolution which is marked "[REDACTED]" in the redacted copy, which contains the redacted information to be disclosed inside the brackets in the unredacted version, should be made public upon Commission approval of this resolution. Specific pricing information which appears

[[[underlined in triple brackets]]], which appears in this light blue highlight in the unredacted electronic copy, which appears in gray highlight in the unredacted hardcopy, should *not* be made public under any circumstances. Additionally, any terms of the Power Purchase Agreements (PPAs) and some confidential information not submitted under Section 583 (i.e. TURN protest and replies of the Facilities) should not be revealed. Such information is also highlighted in blue or gray to denote its redacted nature.

Summary

PG&E requests the Commission find the proposed contracts reasonable and prudent for purposes of recovery in rates without further Commission review. Energy Division finds that PG&E's use of bilateral agreements, evaluation process and contract selection comply with the August 13 ACR. PG&E also made a sufficient showing that these contracts are in the ratepayers' interest since these transactions will meet PG&E's renewable energy procurement needs at reasonable cost. The transactions may also provide some insurance against possible price hikes if adverse market conditions occur.

PG&E obtains the attributes necessary to qualify the output of the units toward its RPS targets. We find that the contracts will count toward PG&E's APT.

The Commission does not establish a routine practice or new methodology in this resolution, as the approval of these contracts is not indicative of approval of any contracts to be submitted in the future.

This resolution only applies to the interim renewable energy contracts for which PG&E is seeking Commission approval in its Advice Letter, and does not prejudice issues related to Renewables Portfolio Standard Program (RPS) implementation. Issues related to annual renewable energy procurement targets, flexible compliance mechanisms, and other details are currently being considered in R.01-10-024.

COMMENTS

Public necessity requires that the 30-day comment period of Public Utilities Code section 311(g) be reduced in order to secure the benefits of the proposals contained AL 2423-E. We have balanced the public interest in avoiding the possible harm to public welfare flowing from the delay in considering this resolution against the public interest in having the full 30-day period for review

and comment as required by Rule 77.7(f)(9). We conclude that the former outweighs the latter. We conclude that failure to adopt a decision before the expiration of the 30-day review and comment period would cause significant harm to the public welfare. Accordingly, we reduce the comment period for this resolution.

Comments were timely received by TURN.

TURN's comments were filed under confidential seal. While the discussion of certain issues raised by TURN are held redacted in the Discussion section until the resolution is adopted, we reveal our discussion of TURN's comments. None of this discussion compromises sensitive contract information nor any material filed under seal pursuant to Pub. Util. Code Section 583 by PG&E in AL 2423-E.

TURN reiterates its arguments for requiring the contracts to provide pass-through of subsidies obtained by the facilities through the SB 704 program. TURN's arguments were settled in the discussion section of the draft resolution, when the request was denied. Based on our review of the legislation and the reply comments of the Facilities, we believe the intent of the Legislature was to create an additional revenue stream for these facilities for providing air quality and public health benefits⁷. The legislation does not suggest a commensurate reduction in any contract price for electrical energy production.

TURN proposes an alternate to requiring a pass-through of the agricultural biomass subsidy. TURN proposes that the Commission clarify that the contracts will be reviewed at the end of the first contract period and allowed to continue into the next period "only after the full quantity of expected future CEC subsidies have been considered and deemed cost-effective for ratepayers." A future review of the contract price with possible reversal of the treatment of these subsidies would make the contracts untenable. We will further examine the use of multiple subsidies by renewable facilities that bid in RPS solicitations in the RPS phase of the Rulemaking.

⁷ See Health and Safety Code §41606(a)(1), which states Legislative intent "to reduce air quality and protect the public health"

TURN also urges the Commission to revisit the “excessive confidentiality protections” surrounding the discussion of “basic policy issues surrounding the process of renewable procurement.” We agree with TURN’s suggestion, and modify the draft resolution to make public upon approval of the resolution the discussion on PG&E’s contract selection process, as well as the section titled “TURN Confidential Comments and Reply Comments of PG&E and the Facilities,” which contains discussion on application of CEC subsidies and potential new subsidy awards from the program created by SB 704.

FINDINGS

1. Assigned Commissioner Ruling dated August 13, 2003, authorized the IOUs to conduct interim renewable energy procurement, prior to full RPS solicitations, subject to specific criteria. The IOUs shall file an Advice Letter to seek pre-approval of any contract for such interim procurement.
2. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities’ interim procurement needs and strategy, proposed procurement process, and selected contracts.
3. The PRG for PG&E is comprised of Aglet Consumer Alliance, California Energy Commission (CEC), California Utility Employees (CUE), Consumers Union (CU), Department of Water Resources (DWR), Energy Division, Office of Ratepayer Advocates (ORA), Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN).
5. PG&E filed AL 2423-E on September 18, 2003, and requested expedited approval of three biomass renewable energy contracts.
6. PG&E made a sufficient showing that the contracts were mutually agreeable to the parties, the evaluation methodology was reasonable, and the selected contracts meet PG&E’s renewables procurement requirements at reasonable cost.
7. PG&E demonstrated compliance with the technical requirements of the Assigned Commissioner Ruling dated August 13, 2003. PG&E deviated from the procedural requirement of the Ruling that the IOUs must follow the general Commission process for Advice Letter review.

8. AL 2423-E was timely protested by TURN. The protest should be denied. Replies to TURN's protest were timely filed by PG&E and counsel representing the facilities named in the proposed contracts.
9. PG&E should make Advice Letter filings during the course of the contracts as directed in the confidential discussion in the section titled "Contracts selected".
10. The output from these facilities under contract to PG&E will count toward PG&E's Annual Procurement Target (APT) for RPS purposes.
11. We do not establish a routine practice or new methodology in this resolution, as the approval of these contracts is not indicative of approval of any contracts to be submitted in the future.
12. We do not prejudge any issues related to Renewables Portfolio Standard Program (RPS) implementation in this resolution.
13. The confidential material being made public pursuant to this resolution was not disclosed in the redacted agenda resolution provided for public review for the Commission meeting. Text in this resolution which is marked "[REDACTED]" in the redacted copy, which contains the redacted information to be disclosed inside the brackets in the unredacted version, should be made public upon Commission approval of this resolution.
14. Specific pricing information which appears **[[[underlined in triple brackets]]]**, which appears in light blue highlight in the unredacted electronic copy, which appears in gray highlight in the unredacted hardcopy, should *not* be made public under any circumstances. Additionally, any terms of the Power Purchase Agreements (PPAs) and some confidential information not submitted under Section 583 (i.e. TURN protest and replies of the Facilities) should not be revealed. Such information is also highlighted in blue or gray to denote its redacted nature.
15. We should approve AL 2423-E effective today.

THEREFORE IT IS ORDERED THAT:

1. PG&E's request, as filed in AL 2423-E, is approved.
2. The protest of TURN is denied.
3. PG&E shall make Advice Letter filings during the course of the contracts as directed in the confidential discussion in the section titled "Contracts selected".
4. All text in this resolution which is marked "[REDACTED]" in the redacted copy, and which contains the redacted information to be disclosed inside the brackets in the unredacted version, should be made public upon Commission approval of this resolution, as allowed under Public Utilities Code Section 583.
5. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 16, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY

I will file a dissent.
/s/ CARL W. WOOD
Commissioner

I will file a dissent.
/s/ LORETTA M. LYNCH
Commissioner